



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 02, 2023

IN THE MATTER OF:

Appeal Board No. 626983

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board No. 626982, the claimant appeals from the decisions of the Administrative Law Judge filed November 21, 2022, insofar as they sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination denying the claimant's request to waive repayment of overpayment of Federal Unemployment Insurance benefits for failure to demonstrate that repaying the recoverable overpayment is contrary to equity and good conscience.

In Appeal Board No. 626983, the claimant appeals from the decisions of the Administrative Law Judge filed November 21, 2022, insofar as they sustained a Commissioner of Labor's timeliness objection and continued in effect the initial determination charging the claimant with an overpayment of \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic Security

(CARES) Act of 2020.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

We have reviewed the entire record and have considered the testimony and other evidence.

With respect to Appeal Board No. 626982, it appears that no errors of fact or law have been made. The

findings of fact and the opinion of the Administrative Law Judge insofar as they sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination denying the claimant's request to waive repayment of overpayment of Federal Unemployment Insurance benefits, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

Our review of the record reveals, however, that in Appeal Board No. 626983, the issue of whether there was an overpayment of FPUC benefits should be remanded to hold a further hearing. We note that although the hearing Judge decided that case based upon the timeliness of the claimant's hearing request, no timeliness objection was asserted by the Commissioner of Labor with respect to the claimant's request for a hearing on the overpayment, and a decision on the merits of whether the claimant was overpaid FPUC benefits is required. The record was not adequately developed to render a fully informed decision on this issue.

In light of the claimant's testimony, and contention again on appeal, that he sent a letter and bank documents to the Department of Labor on May 10, 2021, after receiving the April 16, 2021 FPUC overpayment determination, the claimant is directed to produce that letter at the remand hearing, and any other documents and communication he had with the Department around the time he received the overpayment determination.

The letter and documents produced by the claimant shall be received into evidence after the appropriate confrontation and opportunity for objection.

The Commissioner of Labor is placed on notice that the claimant has asserted that any duplicate payments for the weeks ending April 19, 2020 and May 3, 2020 were not overpayments, because for two earlier weeks he did not receive FPUC benefits when he should have. This contention shall be explored at the remand hearing, and the Commissioner shall be given the opportunity to address the claimant's position.

Towards this end, the claimant is directed to produce his bank statements for the account or accounts into which his unemployment benefits were deposited for the months of April, May, and June 2020. The statements produced should indicate the dates on which any amounts were deposited by the Department of Labor, as well as the amount of the deposits. These bank statements should be

compared with the claim history/benefits ledger produced by the Department and received into evidence as Hearing Exhibit 3, to determine whether an overpayment of FPUC benefits was made.

The parties are placed on notice that failure to produce the documentation directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and deciding that the evidence not produced would not support that party's position.

The hearing Judge shall receive into the record any other evidence needed to decide the issue of the recoverable overpayment of FPUC benefits.

DECISION: In Appeal Board No. 626982, the decision of the Administrative Law Judge is affirmed.

In Appeal Board No. 626982, the Commissioner of Labor's timeliness objection is sustained.

In Appeal Board No. 626982, the initial determination, denying the claimant's request to waive repayment of overpayment of Federal Unemployment Insurance benefits for failure to demonstrate that repaying the recoverable overpayment is contrary to equity and good conscience, is continued in effect.

In Appeal Board No. 626983, the decision of the Administrative Law Judge, is rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the issue of the recoverable overpayment of FPUC benefits in Appeal Board No. 626983, shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on that issue, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determination charging the claimant with an overpayment of FPUC

benefits in the amount of \$1,200, recoverable pursuant to Section 2104 (f)(2) of the CARES Act of 2020, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER